

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: June 9, 1987

TO: Sergeant S. A. Elmore, San Diego Police
Department
FROM: City Attorney
SUBJECT: Legal Opinion Concerning a Massage
Establishment Exemption by a Licensed Holistic
Health Practitioner

In a memorandum dated April 21, 1987 you submitted two questions relating to what is described in San Diego Municipal Code section 33.3501 as the San Diego Massage Business and Massage Technicians regulatory ordinance. Those questions are stated essentially as follows:

1. Can a holistic health practitioner holding an exemption per San Diego Municipal Code section 33.3511 legally operate a massage establishment without obtaining a police permit or license and employ massage technicians to give massages?
2. Does a holistic health practitioner's exemption per San Diego Municipal Code section 33.3511 extend to employees?

With respect to the first question, holistic health practitioners are neither required to obtain a permit while engaged in the performance of their profession nor a license for the establishment at which a massage is administered by or under their control or direction. San Diego Municipal Code section 33.3511(e). The ordinance does not prohibit the employment of massage technicians to give massages under the control or direction of holistic health practitioners.

The second question relates to the possible exemptions of holistic health practitioner employees. Holistic health practitioner employees who administer massages for consideration are considered massage technicians. San Diego Municipal Code section 46.0102(b). The purpose and intent of Chapter IV, article 6, Division 1 of the San Diego Municipal Code is to establish certain minimum standards for the administration of commercial massages in The City of San Diego to protect the public health, safety and welfare of the citizens. San Diego Municipal Code section 46.0101. In addition to certain specified professionals, this division does not apply to the following:

Persons who have been operating or

employed as message technicians on a regular basis for three (3) years immediately preceding the effective date of this division, provided satisfactory proof of such employment can be established.

San Diego Municipal Code section 46.0104(c).

Employees of a holistic health practitioner who give or administer to another person, for any form of consideration whatsoever, a massage must meet the massage technician qualifications of San Diego Municipal Code section 46.0103 unless specifically exempt under San Diego Municipal Code section 46.0104. Mere employment by a holistic health practitioner does not exempt an employee from the diploma or certificate requirements. San Diego Municipal Code section 46.0105.

It is hoped that the foregoing information satisfies your inquiry. If you have any further questions on this matter please feel free to call.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

JMB:ls:503.8

MS-87-6